

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re *Ex Parte* Application of Fundo de Liquidação Financeira – Fundo de Investimento em Direitos Creditórios Não Padronizado, pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings,

Petitioner.

Misc. Case No. M-_____

**EX PARTE APPLICATION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782
TO CONDUCT DISCOVERY FOR USE IN FOREIGN PROCEEDINGS**

Petitioner, Fundo de Liquidação Financeira – Fundo de Investimento em Direitos Creditórios Não Padronizado, (“FLF”), respectfully asks this Court to grant the Order submitted with this Application, which gives Petitioner leave, pursuant to 28 U.S.C. § 1782 and Rules 26 and 45 of the Federal Rules of Civil Procedure, to serve Safra National Bank of New York, Santander Bank S.A., Bank of America S.A., Deutsche Bank A.G., and BNP Paribas USA (the “Subpoenaed Entities”) the subpoenas attached as “**Exhibits A-E**” to this Application, and in support thereof states as follows.

The requested relief is for the purposes of obtaining necessary discovery in aid of a pending foreign proceeding. Petitioner, Fundo de Liquidação Financeira – Fundo de Investimento em Direitos Creditórios Não Padronizado (“FLF”) is an investment fund managed by Jive Asset Gestão de Recursos Ltda. (“Jive”). Jive purchased a debt with an underlying summary collection proceeding (the “Lawsuit”) against K.G. Serviços e Participações Eireli, Alvaro Maluf a/k/a Maluf Jabur Alvaro (“Alvaro”), and Paulo Maluf a/ka Maluf Jabur Paulo (“Paulo”), jointly referred herein as “Defendants.” The Lawsuit is based on a September 13, 2019 agreement executed among FLF, as creditor, and Defendants, as well as certain companies of the Colombo Group. The Colombo Group is a

Brazilian retail conglomerate controlled and managed by Alvaro and Paulo (“Colombo,” and together with Defendants the “Co-Debtors”). Among other provisions, the Co-Debtors acknowledged and confessed to jointly and severally owing a debt of BRL 73,130,729.04 to FLF as of September 2019.

As of the date of the filing of the Lawsuit, on February 1, 2021, Defendants jointly and severally owed FLF BRL 85,106,823.93. FLF has not, to date, been able to successfully recover the amounts due under the *ação de execução*, the Brazilian summary collection proceeding. Furthermore, because Alvaro has not paid the amounts due under the *ação de execução* within the 3-day deadline, FLF has, in accordance with Brazilian law, asked the Lower Court to seize Alvaro’s assets and funds found in bank and investment accounts. FLF anticipates making the same request with respect to Paulo’s assets at the procedurally appropriate time.

FLF has determined that the Defendants own real property, assets, and accounts in Florida, and that Defendants conduct business in Florida, and also use Florida and New York banks to conduct business in the U.S. and abroad. FLF believes that the Defendants often commingle their assets and that assets owned by Alvaro may also be held by Paulo or in Paulo’s account and vice versa, as well as by family members that hold senior management positions at several of the Defendants’ companies.

Based on its investigation, FLF believes that the Defendants held, or currently hold, accounts or assets and/or have transacted with other financial institutions located in New York. The Subpoenaed Entities are the entities to be subpoenaed for records and other documents of accounts held by Defendants and affiliated persons, or transactions involving Defendants and affiliated persons, as set forth in more detail in the accompanying

Declaration of Marcelo Moraes Santiago and Memorandum of Law.

Once this information is obtained, FLF shall duly inform the Brazilian court where the action is pending. FLF will seek further relief from the Brazilian Court ordering Alvaro to refrain from dissipating any assets identified by FLF and to either (i) pay those assets into the Brazilian Court, or (ii) order Alvaro to use any assets identified pursuant to pay any outstanding amounts due and owing to FLF.

Based upon the Declaration of Marcelo Moraes Santiago and the accompanying Memorandum of Law to this Application, the Court should grant this Application *ex parte*.

A. The Documents Sought

Petitioner seeks bank records and documents from the Subpoenaed Entities related to the Defendants' bank and investment accounts, and business transactions, which the Petitioner believes were used to conduct business and transfer assets in the United States.

B. Petitioner's Application Should Be Granted

Petitioner meets all the statutory criteria for the issuance of an order allowing the requested discovery under 28 U.S.C. § 1782. The Subpoenaed Entities are all located in this District. The Petitioner seeks to use the documents it requests from the Subpoenaed Entities in a pending foreign proceeding. The documents sought from the Subpoenaed Entities are necessary to identify and locate the Defendants' assets so that the Petitioner may duly inform the Brazilian court and seek further relief from the Brazilian court to recover the amounts due and owing to FLF. Moreover, as set forth in its Memorandum of Law filed concurrently herewith, all the discretionary factors that this Court may consider likewise favor granting this *ex parte* application. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004) (describing discretionary factors).

Accordingly, Petitioner respectfully requests that the Court (a) grant the Application for Order to Conduct Discovery in a Foreign Proceeding *Ex Parte*; (b) enter the Proposed Order; (c) grant Petitioner leave, pursuant to 28 U.S.C. § 1782, to serve the subpoenas attached to this Application as Exhibits A-E; and (d) grant any and all other further relief to Petitioner as deemed just and proper.

Respectfully submitted this 7th day of September, 2021.

BAKER & HOSTETLER LLP

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